



CITY OF SAN ANTONIO

DEVELOPMENT SERVICES DEPARTMENT

TO: All Development Services Department Customers

SUBJECT: **INFORMATION BULLETIN 138**
Interlocal Agreement with Port Authority of San Antonio

DATE: November 8, 2007

The purpose of this Information Bulletin is to inform the public of an Interlocal Agreement that has been executed between the City of San Antonio (COSA) and the Port Authority of San Antonio (formerly known as Greater Kelly Development Authority) regarding plans review, permitting, inspecting and issuance of temporary and permanent Certificates of Occupancy (C of O's). The Interlocal Agreement was executed on August, 7, 2007 and is applicable to the area formerly known as Kelly Air Force Base - now known as "KellyUSA". A copy of the executed Interlocal Agreement follows this Information Bulletin.

The following is a summary of the Interlocal Agreement:

1. The Port Authority and its tenants located at KellyUSA **are not required** to obtain permits, inspections or C of O's for new buildings or renovations utilizing COSA's normal process via the Development Services Department (DSD).
2. **The Port Authority will conduct all plan reviews and inspections not identified in item 3 below** and will be responsible for assuring that the design and new construction or renovation complies with all provisions of the City's technical codes in effect at the time of permitting. The Port Authority shall select its own Building Official to oversee the permitting and inspection program who will perform the duties and responsibilities as outlined in the *International Building Code*.
3. The City will continue to be responsible for conducting Historic, Drainage/Stormwater; Health plan reviews and their associated inspections and Fire inspections under the applicable City Code provisions.
4. The Port Authority shall abide by COSA's demolition ordinance and shall review and issue permits for demolition of buildings.
5. This Interlocal Agreement commenced on August 7, 2007 and shall continue for an initial term of three (3) years. The City and the Port Authority may, upon mutual agreement, renew this Agreement, on the same terms and conditions for up to two (2) additional successive one-year terms.

The following persons can be contacted regarding questions related to the Interlocal Agreement and the plans review, permitting, inspection and issuance of C of O's for projects at KellyUSA.

COSA Development Services Dept.	
J. Barry Archer, C.B.O., C.P.C.A. Assistant Director Building Development Division (210) 207-8236 (210) 207-3315 (fax) Barry.Archer@sanantonio.gov	Anna Galimore Interim Special Projects Manager (210) 207-8270 Anna.Galimore@sanantonio.gov
Michael Shannon, P.E., C.B.O. Development Services Engineer Plans and Permits Section (210) 207-5006 (210) 207-6377 (fax) Michael.Shannon@sanantonio.gov	Richard Chamberlin, P.E. Development Services Engineer Plans and Permits Section (210) 207-8281 (210) 207-6377 (fax) Richard.Chamberlin@sanantonio.gov
Port Authority San Antonio	
Albert J. Raymond III, AIA Vice President of Planning Services 143 Billy Mitchell Blvd. Suite 6 San Antonio, TX 78226 210 362 7851 (office) 210 362 7828 (fax) 210 254 4527 (cell) al.raymond@portsanantonio.us	Maria de Lourdes Gonzalez Building Permit Administrator 143 Billy Mitchell Blvd. Suite 6 San Antonio, TX 78226 210 362 7872 (office) 210 362 7828 (fax) 210 215-2301 (cell) maria.gonzalez@portsanantonio.us

As a customer service initiative, COSA DSD and the Port Authority have established the following guidelines to assist customers determine whether or not to submit plans for review to COSA DSD or to the Port Authority:

1. Plans already in the COSA DSD Plan Review System will be completed by DSD to the point that they are determined to be "Approved for Code Compliance". Customers shall work within COSA's normal process via the DSD Plan Review system. Once DSD staff determines that the plans are "Approved for Code Compliance", the plans and paperwork will be forwarded to the Port Authority. The Port Authority will review, issue permits and process the remainder of the project (e.g., issue trade permits, conduct inspections, etc.) as required per their own processes. Note that for these plans, requests for Partial or Conditional Building Permits are to be submitted to the Port Authority (attn: Al Raymond – see contact list above). The Port Authority shall coordinate with COSA DSD, Planning, Public Works and/or San Antonio Fire Department (SAFD) as needed to determine if a Partial or Conditional Permit will be issued to the project.

2. Projects already in the COSA DSD Inspections System (i.e., they have already received building permits from COSA DSD) will be completed via the normal DSD inspection process. The plans and paperwork will be forwarded to the Port Authority. The Port Authority will review and issue a C of O and process the remainder of the project as required. Note that for these plans, requests for Partial or Temporary C of O's are to be submitted to the Port Authority (attn: Al Raymond – see contact list above). The Port Authority shall coordinate with COSA DSD, Planning, Public Works and/or SAFD as needed to determine whether a Partial or Temporary C of O will be granted.
3. All other projects (i.e. those that have not already been submitted to COSA DSD) shall be submitted to the Port Authority by the customer directly. Contact Al Raymond (see contact list above) for submittal procedures. COSA DSD staff shall not accept further applications for building permit for KellyUSA projects and will direct customers to the Port Authority.
4. Projects that will require review by COSA Departments (e.g., Historic, Drainage/Stormwater; and Health) will be delivered to COSA DSD by the Port Authority for distribution to the appropriate staff.
5. The Port Authority will establish contact with SAFD for inspections as necessary.

Again, this information is provided to inform customers of the Interlocal Agreement between COSA and the Port Authority and provide guidance regarding the overall process. If you have any questions regarding any of the information above or anything in the executed Interlocal Agreement, please contact any one of the COSA DSD or Port Authority staff listed above.

Attachments:

1. Executed Interlocal Agreement between COSA and the Port Authority of San Antonio
2. Driving directions from COSA's Cliff Morton Development and Business Service (DSD "One Stop Center") to the Port Authority of San Antonio's permitting offices



INTERLOCAL AGREEMENT BETWEEN CITY OF SAN ANTONIO AND PORT AUTHORITY OF SAN ANTONIO

This Agreement is entered into by and between the CITY of San Antonio (hereinafter referred to as "CITY"), a Texas Municipal Corporation, acting by and through its CITY Manager pursuant to Ordinance No. 2007051705 dated MAY 17, 2007, and the Port Authority of San Antonio (former known as Greater Kelly Development Authority) (hereinafter referred to as "AUTHORITY"), a defense base development authority and political subdivision of the State of Texas, established by the CITY of San Antonio pursuant to Chapter 379B of the Texas Local Government Code acting by and through its Board of Directors, and duly authorized Chief Executive Officer. The AUTHORITY and CITY desire to enter into this Interlocal Agreement pursuant to Ch. 791, Texas Government Code.

AUTHORITY is organized for the purposes of formulating, adopting and implementing objectives associated with the conversion and redevelopment of the property formerly known as Kelly Air Force Base. The purpose of the conversion and redevelopment is to promote and encourage new businesses to locate and to increase local employment opportunities as well as developing the facility as a multi-use commercial, industrial and technology center known as "KellyUSA."

The Parties agree and acknowledge that the area formerly known as Kelly Air Force Base (KAFB) was annexed by CITY on December 31, 1996 by Ordinance No. 85092, and that the United States Government is in the process of transferring fee simple title ownership of KAFB to AUTHORITY. The Parties agree and acknowledge that until title to KAFB passes from the United States Government to the AUTHORITY, pursuant to Section 35--3221 of the San Antonio Unified Development Code, the property comprising KAFB has officially been designated as a "federal military reservation district." By virtue of the federal military reservation district designation, the Parties acknowledge that current CITY zoning regulations do not apply to buildings, other structures, or land under the federal ownership, control, administration or jurisdiction of the United States Government and its military departments. AUTHORITY is currently a lessee of real property from the United States Government and as such can only currently sublet property to public and/or private entities wishing to participate in the redevelopment of KAFB. The Parties also acknowledge that the CITY and AUTHORITY executed a Memorandum of Understanding (MOU) in 1999, that was approved by City Council by Ordinance 90549, that addressed Platting and Zoning issues between the two entities and that both parties have complied with said terms of the MOU.

During the tenure of Kelly Air Force Base, CITY zoning regulations, platting rules, as well as building code requirements did not apply to buildings, other structures, or land under the previous ownership, control, administration or jurisdiction of the United States Government and

its military departments. It is the acknowledged intent of the AUTHORITY, through its redevelopment efforts to voluntarily and gradually upgrade buildings, structures, facilities infrastructure and land uses at KAFB, toward meeting applicable CITY and national code standards. This effort will be accomplished through a combination of publicly and privately financed construction renovations, upgrades, capital improvements and AUTHORITY subtenant "build-outs," generally accomplished where existing physical configurations and constraints allow, in accordance with CITY ordinances, codes and national code standards.

Therefore, AUTHORITY and CITY agree, as follows:

1. AUTHORITY intends to own the majority of the land that will be redeveloped at KellyUSA. As a result of this ownership, AUTHORITY will comply with current CITY procedures in obtaining platting and amending its current zoning designation. AUTHORITY'S designated zoning classifications for the property at KellyUSA was approved by the City Council on January 12, 2006, Zoning Case No. Z2005273, Ordinance No. 2005-01-12-62. The CITY must approve any deviation from the approved zoning plan.

2. AUTHORITY must upgrade existing buildings, structures, facilities, infrastructure and land use, as new occupancies may dictate, to meet applicable CITY code standards and zoning. New buildings, facilities or structures, as well as any renovations to existing buildings, structures or facilities shall be constructed to meet or exceed CITY code standards effective at the time of construction.

3. AUTHORITY and its tenants located at KellyUSA will not be required to obtain permits, inspections or certificates of occupancy for new building or renovations utilizing CITY's process. AUTHORITY will also make available certification that new construction or renovations comply with all provisions of CITY's technical codes in effect at the time of the permitting. The AUTHORITY will not be required to provide the CITY with any copies of any detailed plans for the new construction or the renovation projects unless requested by the CITY. The AUTHORITY will conduct all plan reviews and inspections not identified in paragraph 4, and be responsible that the Architect/Engineer (A/E) and Contractor as well as the design and new construction or renovation, complies with all provisions of CITY's technical codes.

4. CITY will continue to be responsible for conducting Historic; Drainage/Stormwater; Health plan reviews and inspections and Fire inspections under applicable City Code provisions. AUTHORITY agrees to establish a notification process to indicate when such plan reviews and inspections are required. CITY agrees to conduct such inspections in accordance with Chapter 35 of the Unified Development Code. AUTHORITY shall pay all fees for these plan reviews and inspections as required by the CITY. (See Exhibit 1, Authority and COSA Plan Review & Inspection Notification/Timeframe).

5. AUTHORITY will make all buildings, structures, facilities, infrastructure and land uses available for inspection by CITY to show compliance with all CITY technical codes and to ensure the health, safety and general welfare of both AUTHORITY tenants and

surrounding CITY residents. The CITY will conduct routine inspections during normal business hours. The AUTHORITY will select a qualified Building Official to oversee the permitting and inspection program. The Building Official selected by the AUTHORITY must possess the qualifications and experience necessary to perform the duties and responsibilities as outlined by the International Building Code. The AUTHORITY will notify the CITY as to the Building Official selected and will provide the CITY a copy of the Building Official's qualifications.

AUTHORITY agrees to mandatory periodic inspections and review of plans by CITY staff to ensure compliance with applicable codes. Any non-compliance issues found by the CITY will be communicated to AUTHORITY and addressed by AUTHORITY within a reasonable time period. The CITY shall notify the AUTHORITY in writing of issues not resolved to CITY satisfaction and the AUTHORITY will be responsible for addressing all issues of non-compliance to the CITY's satisfaction.

AUTHORITY agrees to abide by CITY's demolition ordinance and review and issue permits for demolition of buildings.

6. The streets located on the AUTHORITY's property are private streets that are maintained by AUTHORITY. Many of the existing streets do not meet the CITY's street standards. Any new construction or existing street upgrades by AUTHORITY will be constructed in accordance with CITY's requirements. Streets located at the AUTHORITY's property will be dedicated to the City through the Platting process the AUTHORITY intends to utilize in the future. Plans and specifications for all street infrastructure to be dedicated to the City, will be reviewed by Public Works Department and will be inspected by the City during construction. CITY will only accept streets approved by the Public Works Department. Any streets not approved by the Public Works Department will need to be improved before the CITY will accept them as public streets.

7. AUTHORITY and the CITY acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. This agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this agreement shall be in Bexar County, Texas. This agreement is made and is to be performed in Bexar County, Texas and is governed by the laws of the State of Texas.

NO JOINT ENTERPRISE – There is no intention on the part of the parties hereto to create or otherwise form a joint enterprise under or pursuant to this Agreement. The Parties to this Agreement are undertaking a governmental function or service pursuant to the Texas Local Government Code §§ 379B.003 and 379B.004. The Parties to this Agreement do not have a pecuniary purpose, let alone a common one. The purpose of this Agreement is to further the public good, not to gain a profit. The Parties do not have an equal right of control. The AUTHORITY has a superior right to control the direction and management of the enterprise

solely for liability purposes under the Agreement and/or solely by virtue of its responsibility for the day-to-day management and control of the premises.

AUTHORITY covenants and agrees to the extent allowed by law to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to AUTHORITY'S activities under this AGREEMENT, including any acts or omissions of AUTHORITY'S agent, officer, director, representative, employee, consultant or subcontractor of the AUTHORITY, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence is the sole cause of personal injury, death, or property damage. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY TO ANY LIABILITY ATTRIBUTABLE TO CITY BASED ON A JOINT ENTERPRISE LIABILITY THEORY OF RECOVERY. IN THE EVENT PORT AUTHORITY OF SAN ANTONIO AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, ON A BASIS OTHER THAN JOINT ENTERPRISE LIABILITY, LIABILITY SHALL BE APPROTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

AUTHORITY shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the AUTHORITY known to the AUTHORITY related to or arising out of contractor's activities under this contract.

8. This Agreement shall commence on the date of execution by the CITY and continue for an initial term of three (3) years. The CITY and AUTHORITY, upon mutual agreement, may renew this Agreement, on the same terms and conditions, for up to two additional successive one-year terms. On behalf of the CITY, the City Manager or the City Manager's designee is authorized to effect the renewals without further action on the part of the San Antonio City Council, and on behalf of AUTHORITY, the President is authorized to effect the renewals without further action on the part of its Board of Directors. All renewals shall be in writing and signed by either the City Manager or the City Manager's designee, and the _President of the Authority.

Should the AUTHORITY desire to exercise this option to renew and extend the Agreement, it shall provide CITY written notification ninety (90) days prior to the expiration of the current term, advising CITY of AUTHORITY's intent to renew and extend the Agreement. Should the CITY desire not to renew the agreement, CITY must provide AUTHORITY written notification sixty (60) days prior to the expiration of the current term, advising AUTHORITY of CITY's intent not to renew the agreement.

Should the CITY desire to terminate the agreement for convenience, prior to the expiration of the current term, or any renewal term of the agreement, CITY must provide forty-five (45) days notice to the AUTHORITY. CITY may terminate for cause for a material breach effective immediately upon receipt of notification to the AUTHORITY. The City Manager shall have the authority to effect said termination for cause or convenience without further action by the City Council.

9. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Participants created by this Agreement are performable in Bexar County, Texas. This Agreement is entered into by the duly authorized officials of each respective governmental entity.

10. In case any one or more of the provisions hereof should be held to be illegal, invalid or unenforceable in any respect, the Participants agree to make a good faith effort to renegotiate another agreement to fulfill the purpose and intent of the present Agreement. In case any other provision hereof should be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been included in this Agreement.

11. This Agreement constitutes the entire agreement among the Participants hereto with respect to the subject matter hereof, and supersedes any prior understandings or written or oral agreements between the Participants with respect to the subject matter of this Agreement. No amendment, modification or alteration of the terms of the Agreement shall be binding on any Participant unless the same is in writing, dated subsequent to the date hereof, and is duly executed by the Participant against whom enforcement is sought.

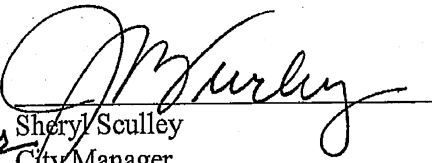
12. Each person signing this Agreement on behalf of a Participant hereby confirms for the benefit of each of the other Participants to this Agreement that any requisite approvals from the governing body of such Participant have been obtained, and all prerequisites to the execution, delivery and performance hereof have been obtained by or on behalf of that governmental entity.

AUTHORITY and CITY have adopted this graduated development monitoring approach in recognition of continued military presence at KellyUSA, realization of existing property conditions, the limited public and private financial resources available to gradually improve the current property conditions at KellyUSA, and the significant, primary, mutual goal of preserving

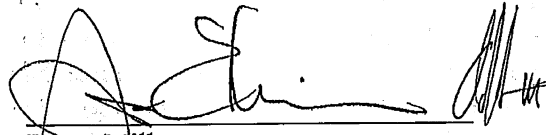
and creating employment opportunities in the AUTHORITY economic redevelopment area, while protecting the health, safety and general welfare of both AUTHORITY tenants and surrounding CITY residents.

EXECUTED this the 7th day of August, 2007.


CITY OF SAN ANTONIO


for Sheryl Sculley
City Manager

PORT AUTHORITY OF SAN ANTONIO


Bruce Miller
President & CEO
Port Authority of San Antonio

ATTEST:


Leticia Vacek
City Clerk

APPROVED AS TO FORM:

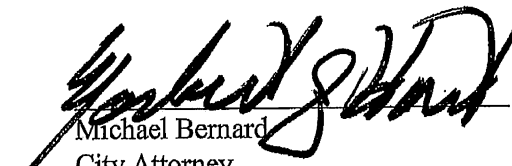

Michael Bernard
City Attorney
for

EXHIBIT 1

AUTHORITY AND COSA PLAN REVIEW & INSPECTION NOTIFICATION/TIMEFRAME

This exhibit seeks to establish and maintain a working relationship between the City of San Antonio's Development Services Department, Public Works Department, Planning Department, the Metropolitan Health District, the Fire Department and the Port Authority of San Antonio.

Each City Department, which currently includes Public Works, Planning (Historical), Metropolitan Health District, and the Fire Department will provide a single point of contact (POC) to represent and facilitate their departments plan review and/or inspections process with respect to this agreement. The Authority's POC will be the Permit Administrator.

PLAN REVIEW

The Authority will deliver drawing and specifications to all appropriate departments. The delivery will be to the POC unless otherwise notified by the Department. Upon receipt, the POC will forward the submittal to reviewers. Whether conducting the initial review or subsequent re-submittals, the review period, from the time the submittal package is received to the time comments are issued will be within 10 calendar days. All comments and communications will be forwarded to the Authority's Permit Administrator. Disbursement of agreed upon fees, for services rendered, will be as directed by each department.

INSPECTIONS

The Authority will contact all appropriate departments when their inspection services are required. The Authority's Permit Administrator will contact the departments POC, unless otherwise notified by the Department, to initiate the interface process. Whether conducting initial inspections or subsequent re-inspections, the time a request is made to the time an inspector is on site will be 24 hours or by the end of the next business day unless extended period is approved by the Authority. All comments and communications, regarding inspections, will be forwarded to the Authority's Permit Administrator. Disbursement of agreed upon fees, for services rendered, will be as directed by each department.

Driving directions from COSA DSD "One Stop Center" to the Port Authority of San Antonio's permitting offices:

- Turn right out of DSD parking lot onto South Alamo headed toward the IH-35 freeway
- Turn left under and enter onto IH-35 South heading toward HWY 90
- Take Hwy 90 west by veering to the right
- Traveling west on Hwy 90 - take the Kelly USA/Gen. Hudnell exit
- This exit is approximately 2 miles which should take the customer right to the signal light @ Hudnell & Billy Mitchell.
- Turn left at the light and our offices are to the left @ 143 Billy Mitchell Blvd.

